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Attorneys for MP3TUNES and MICHAEL ROBERTSON

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.; CAROLINE RECORDS, INC.; EMI CHRISTIAN MUSIC GROUP INC.; PRIORITY RECORDS LLC; VIRGIN RECORDS AMERICA, INC.; BEECHWOOD MUSIC CORP.; COLEGEMS-EMI MUSIC INC; EMI APRIL MUSIC INC.; EMI BLACKWOOD MUSIC; EMI FULL KEEL MUSIC; EMI GOLDEN TORCH MUSIC CORP.; EMI LONGITUDE MUSIC; EMI VIRGIN MUSIC, INC.; EMI VIRGIN SONGS, INC.,) CIVIL ACTION NO. 07-Civ. 9931 (WHP)
Plaintiffs,) DECLARATION OF MICHELLE A.
v.) HON IN SUPPORT OF OPPOSITION
) TO DEFENDANT'S MOTION TO
) DISMISS
MP3TUNES, LLC and MICHAEL ROBERTSON)
Defendants.)

I, Michelle A. Hon, declare:

1. I am an attorney licensed to practice in the State of California and I am admitted *pro hac vice* before this Court. I am an attorney with the law firm Duane Morris LLP, counsel for defendants MP3tunes, LLC ("MP3tunes") and Michael Robertson. I have personal knowledge of the matters stated herein, and if called as a witness, I could and would testify competently to them.

2. I submit this Declaration in support of defendants' Motion to Dismiss.

3. A search of the California Secretary of State website shows that the corporations listed in the action, are either California corporations or registered to do business in California. Attached hereto as Exhibit A are true and correct copies of the search results from the California Secretary of States for the following corporations: Capital Records, Inc.; Caroline Records, Inc.; EMI Christian Music Group Inc.; Priority Records LLC; Virgin Records America, Inc.; Beechwood Music Corp.; Colgems-EMI Music, Inc.; EMI April Music Inc.; EMI Blackwood Music; EMI Golden Torch Music Corp.; EMI Virgin Music, Inc.; EMI Virgin Songs, Inc.

4. Excluded from the enumerated list above, but plaintiffs in this action are, EMI Full Keel Music and EMI Longitude Music. These companies are listed in the complaint in this action as "duly organized corporations," but with no statement as to where the companies are allegedly incorporated. A diligent search, which included a Dun and Bradstreet search, did not find any record of a corporation under either of these names.

5. According to EMI's website, available at <http://www.emigroup.com/About/Overview/Default.htm>, EMI claims to be the "world's leading independent music company." EMI also claims that it operates directly in 50 countries, with licensees in a further 20 countries. A true and correct copy of this EMI website is attached hereto as Exhibit B.

6. The EMI music catalog and EMI publishing catalog are listed on the EMI Group website at <http://www.emigroup.com/About/Music/EMI+Music+catalogue.htm> and <http://www.emigroup.com/About/Music/EMI+Music+Publishing+catalogue.htm> respectively.

7. MP3tunes filed a Complaint on September 20, 2007, seeking damages, costs and attorney's fees for the material misrepresentations of EMI and seeking declaratory relief that MP3tunes is a service provider as defined by the Digital Millennium Copyright Act ("DMCA"), that MP3tunes's conduct falls within the safe harbor provisions of the DMCA, that the notice provided by EMI was deficient, to the extent that such notice was not deficient, that MP3tunes complied with its obligations under the DMCA, and that MP3tunes' conduct did not constitute copyright infringement. The Complaint was served on October 23, 2007.

8. MP3tunes named EMI Music North America, EMI Group North America and EMI Group Holdings North America as defendants in its original Complaint. These defendants did not dispute that they own the copyrights at issue. However, because individual record labels and publishers have alleged at least some interest in or to the EMI copyrights, on December 3, 2008 MP3tunes filed an Amended Complaint adding the individual record labels and publishers, facts and claims related to the October 25, 2007 cease and desist letters, and a cause of action under California Business & Professions Code § 17200. A true and correct copy of the Amended Complaint as filed is attached hereto as Exhibit C.

I declare under penalty under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of February, 2008 at San Diego, California.

s/Michelle A. Hon
Michelle A. Hon

EXHIBIT A

California Business Portal

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Corporation		
CAPITOL RECORDS, INC.		
Number:	C0229996	Date Filed: 8/20/1948 Status: active
Jurisdiction: DELAWARE		
Address		
160 FIFTH AVE NEW YORK, NY 10011		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
SACRAMENTO, CA 95862		

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CAROLINE RECORDS, INC.		
Number:	C2642864	Date Filed: 3/22/2004 Status: active
Jurisdiction: NEW YORK		
Address		
104 WEST 29TH ST NEW YORK		
NEW YORK, NY 10001		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
SACRAMENTO, CA 95852		

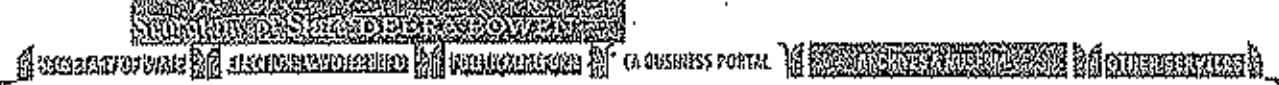
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Corporation		
EMI CHRISTIAN MUSIC GROUP INC.		
Number: C0850956	Date Filed: 8/23/1977	Status: active
Jurisdiction: California		
Address		
2751 CENTERVILLE RD STE 205		
WILMINGTON, DE 19808		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
SACRAMENTO, CA 95852		

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Business Entity Record New Search Search Tips Field Definitions Status Definitions LLC Name Availability LP Name Availability Business Entities Records Order Form Certificates Copies Status Reports LLC FAQs LP FAQs LLC Main Page LP Main Page Site Search	<p style="text-align: center;">LP/LLC</p> <p>PRIORITY RECORDS, LLC</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Number:</td> <td style="width: 30%;">199631010034</td> <td>Date Filed:</td> <td>11/5/1996</td> <td>Status:</td> <td>active</td> </tr> <tr> <td colspan="6">Jurisdiction: DELAWARE</td> </tr> <tr> <td colspan="6" style="text-align: center;">Address</td> </tr> <tr> <td colspan="6">1760 N VINE ST</td> </tr> <tr> <td colspan="6">HOLLYWOOD, CA 90028</td> </tr> <tr> <td colspan="6" style="text-align: center;">Agent for Service of Process</td> </tr> <tr> <td colspan="6">THE PRENTICE-HALL CORPORATION SYSTEM INC</td> </tr> <tr> <td colspan="6">C0267078</td> </tr> </table>	Number:	199631010034	Date Filed:	11/5/1996	Status:	active	Jurisdiction: DELAWARE						Address						1760 N VINE ST						HOLLYWOOD, CA 90028						Agent for Service of Process						THE PRENTICE-HALL CORPORATION SYSTEM INC						C0267078					
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- Fees and instructions for requesting certification of limited partnership and/or limited liability company records are included on the [Business Entities Records Order Form](#).
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- If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report. Fees and instructions for ordering a status report are included on the [Business Entities Records Order Form](#).

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Corporation		
BEECHWOOD MUSIC CORPORATION		
Number:	C0191306	Date Filed: 9/16/1942 Status: active
Jurisdiction: California		
Address		
810 7TH AVE 36TH FL		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
SACRAMENTO, CA 95852		

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Corporation		
COLGEMS-EMI MUSIC, INC.		
Number: C0778259	Date Filed: 8/2/1976	Status: active
Jurisdiction: DELAWARE		
Address		
810 7TH AVE 30TH FL.		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526086		
SACRAMENTO, CA 95852		

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EMI APRIL MUSIC INC.		
Number: C0800838	Date Filed: 10/15/1976	Status: active
Jurisdiction: CONNECTICUT		
Address		
810 7TH AVE 36TH FL		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
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Corporation		
EMI BLACKWOOD MUSIC INC.		
Number: C0800837	Date Filed: 10/16/1976	Status: active
Jurisdiction: CONNECTICUT		
Address		
810 7TH AVE 36TH FL		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 528036		
SACRAMENTO, CA 95852		

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Corporation		
EMI GOLDEN TORCH MUSIC CORP.		
Number: C0636666	Date Filed: 11/28/1967	Status: active
Jurisdiction: NEW YORK		
Address		
75 NINTH AVE 4TH FL		
NEW YORK, NY 10011		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 526036		
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Corporation		
EMI VIRGIN MUSIC, INC.		
Number: C1611356	Date Filed: 4/13/1988	Status: active
Jurisdiction: NEW YORK		
Address		
810 7TH AVE 36TH FL		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 626036		
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Corporation		
EMI VIRGIN SONGS, INC.		
Number: C1611353	Date Filed: 4/12/1988	Status: forfeited
Jurisdiction: NEW YORK		
Address		
810 7TH AVE 36TH FL		
NEW YORK, NY 10019		
Agent for Service of Process		
THE PRENTICE-HALL CORPORATION SYSTEM, INC.		
PO BOX 528036		
SACRAMENTO, CA 95852		

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EXHIBIT B



EMI is the world's leading independent music company. It operates directly in 50 countries, with licensees in a further 20 and employs around 5,500 people. For the year ended 31 March 2007, EMI Group reported revenue of £1,751.5 million and £62.7 million in underlying profit before tax. In August 2007 EMI was acquired by private equity firm Terra Firma.

The company comprises two divisions – EMI Music, one of the top global recorded music companies, and EMI Music Publishing, one of the world's leading music publishers.

As an owner of digital music content, EMI is extremely well positioned to capitalise on the rapid growth of digital music. EMI's strategy is to deliver music to consumers in any form, at any time and in any place. During the year ended 31 March 2007, EMI Group's digital revenues grew from £112.1 million to £164.2 million, representing 9.4% of total underlying revenue.

EMI Music represents recording artists spanning all musical tastes and genres and owns one of the finest catalogues of recorded music ever assembled with over three million individual tracks. The company's roster and catalogue includes world famous stars and developing artists such as Lily Allen, Corinne Bailey Rae, The Beach Boys, The Beatles, Dierks Bentley, Coldplay, Diam's, Depeche Mode, Gorillaz, Norah Jones, The Kooks, Korn, Lenny Kravitz, Kylie, Pink Floyd, Raphael, RBD, Joss Stone, The Rolling Stones, 30 Seconds To Mars, KT Tunstall, Keith Urban, Utada Hikaru and Robbie Williams plus some of the world's finest classical artists including Nigel Kennedy, Simon Rattle, Itzhak Perlman and Angela Gheorghiu.

EMI Music's record labels include Angel, Astralwerks, Blue Note, Capitol, Capitol Nashville, EMI, EMI Classics, EMI CMG, EMI Televisa Music, Mute, Parlophone and Virgin. With around 4,800 employees worldwide, EMI Music's revenue in the year ended 31 March 2007 was £1,350.2 million.

EMI Music Publishing owns one of the largest catalogues of songs in the world, containing more than a million contemporary and classic titles. Its roster of songwriters is unparalleled and the company has won and continues to win more industry accolades and publisher of the year awards than any other music publisher. Its catalogue of best-selling songs includes *Bohemian Rhapsody*, *I Heard It Through The Grapevine*, *New York, New York*, *Over the Rainbow*, the *James Bond* theme, *Singin' In The Rain*, *Santa Claus Is Comin' to Town*, *Wild Thing*, *We Will Rock You*, *Angels*, *Baby Love*, *Crazy in Love* and *Daydream Believer* and is home to many of the world's best songwriters including Arctic Monkeys, James Blunt, Cathy Dennis, Jay-Z, Alicia Keys, Pink, Usher, Kanye West and Amy Winehouse.

With offices all around the world, EMI Music Publishing has about 640 staff and in the year ended 31 March 2007 generated £401.3 million in revenue.

For an illustration of how record labels and publishing companies fit into

the structure of the music business please click here:
[here](#)

EMI Group Limited registered office:

27 Wrights Lane
London W8 5SW
Registered In England No. 229231

Last updated October 2007

EXHIBIT C

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Michelle Hon (SBN 234492)
DUANE MORRIS LLP
101 West Broadway, Suite 900
San Diego, CA 92101
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Facsimile: 619.744.2201
E-Mail: emcramp@duanemorris.com
mthon@duanemorris.com

Attorneys for Plaintiff MP3TUNES, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MP3TUNES, LLC.

Plaintiff,

v

14 EMI GROUP, LTD; EMI GROUP NORTH
15 AMERICA, INC.; EMI GROUP NORTH
16 AMERICA HOLDINGS, INC.; and EMI MUSIC
17 NORTH AMERICA, LLC; CAPITOL RECORDS,
18 INC; CAROLINE RECORDS, INC.; EMI
19 CHRISTIAN MUSIC GROUP INC.; PRIORITY
20 RECORDS LLC; VIRGIN RECORDS AMERICA,
INC., BBBCHWOOD MUSIC CORP.; COLOEMS-
EMI MUSIC INC.; EMI APRIL MUSIC INC.; EMI
BLACKWOOD MUSIC; EMI FULL KBEL
MUSIC; BMI GOLDEN TORCH MUSIC CORP;
EMI LONGITUDE MUSIC; EMI VIRGIN MUSIC,
INC; EMI VIRGIN SONGS, INC.,

Defendants.

Case No.: 07CV1844WQH (NLS)

AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
VIOLATION OF THE DIGITAL
MILLENNIUM COPYRIGHT ACT;
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
SECTION 17200; DEMAND FOR JURY
TRIAL

Judge: William Q. Hayes
Complaint Filed: September 20, 2007

Plaintiff MP3tunes, LLC ("Plaintiff"), by its attorneys, Duane Morris LLP, alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. As set forth in more detail below, Plaintiff MP3tunes, LLC ("MP3tunes") owns and operates MP3tunes.com and Sideload.com (collectively, the "Sites") and offers Oboe lockers and software to users of the Sites.

1 2. MP3tunes.com is a music service provider and the home of Oboe, a personal music
2 locker offering unlimited online storage. Oboe users can sync their personal music collections to
3 enjoy their music through any web browser, as well as through a growing number of home
4 entertainment and mobile devices.

5 3. Sideload.com is a website owned and operated by MP3tunes that aggregates popular
6 free music tracks on the web chosen and posted by users of Sideload.com and/or Oboe.

7 4. MP3tunes feels justifiably threatened that it will be sued by Defendants as a result of
8 the foregoing websites and software because Plaintiff received three threatening – albeit deficient –
9 cease-and-desist letters from Defendants' counsel, dated September 4, 2007, September 18, 2007,
10 and October 25, 2007 (collectively, the "Notice") and because Plaintiff was informed by
11 Defendants' counsel that the matter would not be resolved without litigation unless there was a
12 substantial monetary payment by Plaintiff.

13 5. By this action, MP3tunes seeks a declaration that (i) MP3tunes.com and
14 Sideload.com are service providers as defined in the Digital Millennium Copyright Act ("DMCA"),
15 17 U.S.C. § 512(k); (ii) the conduct by MP3tunes.com and Sideload.com challenged by Defendants
16 in the Notice falls within the protections of §§ 512(a), (b), (c) and/or (d); (iii) the Notice served on
17 Plaintiff was deficient under 17 U.S.C. §§ 512(c) and/or (d); (iv) to the extent the Notice was not
18 deficient, Plaintiff complied with its obligations under 17 U.S.C. §§ 512(c) and/or (d); and (v) the
19 activities of Sideload.com, MP3tunes.com and Oboe complained of by Defendants in the Notice do
20 not constitute direct copyright infringement, contributory copyright infringement and/or inducement
21 of copyright infringement.

22 6. MP3tunes further seeks: (i) an order from the Court pursuant to California Business
23 and Professions Code §17200, et seq., enjoining the defendants from engaging in their unfair,
24 unlawful, and deceptive business act or practice of intentionally sending defective Notice under the
25 DMCA in order to further their business interests; (ii) an order from the Court requiring Defendants
26 to disgorge any profits that they have made as a result of their wrongful conduct; and (iii) an award
27 of attorney's fees and costs.

28

PARTIES

2 7. Plaintiff MP3tunes, LLC is a Delaware limited liability company with its principal
 3 place of business in San Diego, California.

4 8. Defendant EMI Group, LTD ("EMI LTD") is headquartered in London, England.
 5 EMI operates in the United States through its division, EMI Music Group North America, as well as
 6 subsidiaries EMI Group North America, Inc., EMI Group North America Holdings Inc. and EMI
 7 Music North America, LLC, among others. The record labels EMI purports to represent in the
 8 United States include the co-defendants listed in paragraphs 9 through 25 below.

9 9. Defendant EMI Group North America, Inc. ("EMI NA Inc.") is a Delaware
 10 corporation with its principal place of business in New York, New York, and transacts business in
 11 this district.

12 10. Defendant EMI Group North America Holdings Inc. ("EMI Holdings") is a Delaware
 13 corporation with its principal place of business in New York, New York, and transacts business in
 14 this district.

15 11. Defendant EMI Music North America, LLC ("EMI Music") is a Delaware limited
 16 liability company with its principal place of business in New York, New York, and transacts
 17 business in this district.

18 12. Defendant Capitol Records, Inc. is a Delaware corporation, with its principal place of
 19 business in New York, New York.

20 13. Defendant Caroline Records, Inc. is a New York corporation, with its principal place
 21 of business in New York, New York.

22 14. Defendant EMI Christian Music Group, Inc. is a California corporation, with its
 23 principal place of business in Brentwood, Tennessee.

24 15. Defendant Priority Records LLC is a Delaware limited liability company with its
 25 principal place of business in New York, New York.

26 16. Defendant Virgin Records America, Inc. is a California corporation, with its principal
 27 place of business in New York, New York.

28 17. Defendant Beechwood Music Corporation is a California corporation, with its

1 principal place of business in New York, New York.

2 18. Defendant Colgems-EMI Music Inc. is a Delaware corporation, with its principal
3 place of business in New York, New York.

4 19. Defendant BMI April Music Inc. is a Connecticut corporation, with its principal place
5 of business in New York, New York.

6 20. Defendant BMI Blackwood Music is a Connecticut corporation, with its principal
7 place of business in New York, New York.

8 21. Defendant BMI Full Keel Music is a duly organized corporation, with its principal
9 place of business in New York, New York.

10 22. Defendant Golden Torch Music Corp. is a New York corporation, with its principal
11 place of business in New York, New York.

12 23. Defendant EMI Longitude Music is a duly organized corporation, with its principal place
13 of business in New York, New York.

14 24. Defendant EMI Virgin Music, Inc. is a New York corporation, with its principal place
15 of business in New York, New York.

16 25. Defendant EMI Virgin Songs, Inc. is a New York corporation, with its principal place
17 of business in New York, New York.

18 26. Defendants are collectively referred to herein as "EMI" or "Defendants."

JURISDICTION AND VENUE

27. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57
28 of the Federal Rules of Civil Procedure seeking a declaration of rights and/or other legal relations of
the parties to this litigation with respect to a substantial controversy arising under the copyright laws
of the United States, 17 U.S.C. § 101 *et seq.* This action further seeks injunctive relief under
California Business and Professions Code section 17200, *et seq.*, prohibiting defendants from
engaging in unfair, illegal, and deceptive business acts and practices.

29. This Court has jurisdiction over the subject matter of this action pursuant to the
Copyright Act (17 U.S.C. § 101 *et seq.*); 28 U.S.C. §§ 1331, 1338; the Declaratory Judgment Act
(28 U.S.C. § 2201); and 28 U.S.C. § 1337.

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1 29. Venue is proper in this district pursuant to 28 U.S.C. §§ 1331 and 1333 because
2 Defendants transact business in this district. Moreover, Plaintiff resides in this district and/or the
3 acts complained of herein have had, and will have, substantial effects in this district.

THE BUSINESS OF MP3TUNES

30 Plaintiff MP3tunes, LLC owns and operates MP3tunes.com and Sideload.com.

6 31. MP3tunes.com is a music service provider and the home of Oboe, a personal music
7 locker offering unlimited online storage. Oboe users can sync their personal music collections to
8 enjoy them through any web browser, as well as through a growing number of home entertainment
9 and mobile devices.

32. MP3tunes.com does not control or select the songs in an individual consumer's locker
10 and instead merely provides online storage space for such music. Consumers can organize, add and
11 delete songs as they choose. While MP3tunes.com can identify the songs in a consumer's locker, it
12 has no means of determining where the track came from (i.e. from another website, from a CD that
13 the user owns or elsewhere). Only the individual consumer can access his or her own particular
14 songs from the consumer's locker.
15

16 33. Sideload.com is a website owned and operated by Plaintiff that aggregates popular
17 free music tracks on the web designated by users of the Sites. The songs listed on Sideload.com are
18 designated and posted by users of the Sites. Consumers can also listen to songs on Sideload.com
19 and "sideload" those tracks into their personal lockers, onto their hard drives or elsewhere. Plaintiff
20 plays no role in which songs are designated for Sideload.com by users of the Sites. None of the
21 songs designated by users for sideloading or listening are physically available on Sideload.com.
22 Rather, what is provided is a hyperlink.

23 34. Until Plaintiff's recent receipt of Defendants' Notice (discussed below), Plaintiff
24 believed that all of the songs on Sideload.com and in the consumer's personal lockers were non-
25 infringing songs. Before using Sideload.com and MP3tunes.com, consumers must agree to the
26 Terms of Use set forth on both websites, which states that the user "acknowledge[s] that by
27 uploading music or any other content to the Site, or requesting that music or any content be uploaded
28 to [the user's] account maintained on the Site; that [the user is] directing [Plaintiff] to store the file in

1 the format in which it is uploaded and to convert and store it in the MP3 format, or such other format
 2 in which it may be converted by [Plaintiff]. [The user] agree[s] that [he/she] will not upload music
 3 and content, and will not request that any music or content be uploaded to [her/her] account
 4 maintained on the Site, that infringes the copyright or other intellectual property rights of any third
 5 party."

6 35. The Terms of Use states further that "[u]nder the appropriate circumstances, it is
 7 Plaintiff's policy to remove and/or to disable access from MP3tunes to web pages of repeat
 8 infringers, to terminate subscribers and account holders who are repeat infringers, and to remove
 9 and/or to disable access from MP3tunes to web pages as to which there have been steps taken for the
 10 purpose of affecting MP3tunes's search results such as adding inappropriate 'meta-tags.'"

11 36. Thus, until recently, Plaintiff believed that all of the songs on Sideload.com and in the
 12 consumer's personal lockers were non-infringing songs. Indeed, Plaintiff still believes that the songs
 13 currently in the consumer's personal lockers are non-infringing and Plaintiff has no basis to believe,
 14 and no means of determining, otherwise.

15 37. For the reasons set forth below, MP3tunes cannot continue to operate MP3tunes.com,
 16 Sideload.com and the Oboe lockers without fear of crippling litigation until this action is resolved.

DEFENDANTS' ACTIONS

18 38. On September 4, 2007, September 18, 2007, and October 23, 2007, Defendants,
 19 through their counsel, sent Notice, which was deficient under the DMCA, to Plaintiff alleging that
 20 Plaintiff, through its websites MP3tunes.com and Sideload.com and its "Oboe Software Suite" "is
 21 copying and storing to its servers, indexing, publicly performing, and making available for download
 22 hundreds (if not thousands) of [Defendants'] copyrighted recordings in violation of the Copyright
 23 Act." A true and correct copy of the Notice is attached hereto as Exhibit A.

24 39. The Notice is deficient for a number of reasons. First, it fails to identify the party
 25 represented by Jenner & Block LLP sending the Notice. To the contrary, the Notice identifies only
 26 divisions of Defendants, but not legal entities. To date, the EMI entity that served the deficient
 27 Notice is unknown.

28 40. Second, the Notice falsely states that "[f]or a variety of reasons, MP3[t]unes is not

1 protected by any of the 'safe-harbors' of the Digital Millennium Copyright Act ('DMCA'). To the
 2 contrary, MP3tunes.com and Sideload.com are service providers as defined in 17 U.S.C. § 512(k)
 3 and their conduct falls within the enumerated categories of §§ 512(a), (b), (c) and/or (d).

4 41. Third, with the exception of approximately 350 songs about which Defendants
 5 properly notified Plaintiff pursuant to 17 U.S.C. § 512(c)(3)(A)(ii) by enclosing a CD-ROM listing
 6 the songs and website locations which Defendants alleged infringed the copyrights of BMI and/or
 7 parties it allegedly represents, the remainder of the Notice was deficient. As to the songs that
 8 Defendants properly identified on the list enclosed with the Notice, those songs were immediately
 9 removed from Sideload.com and Defendants were promptly notified of this.

10 42. However, the Notice stated further that the "enclosed representative list reflects only
 11 a small portion of the total number of infringing BMI works contained on MP3tunes, with more
 12 being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based
 13 on BMI's representative list, MP3tunes is obligated to remove all of BMI's copyrighted works,
 14 even those not specifically identified on the attached. A non-exhaustive further listing of BMI's
 15 recording artists can be found at <http://www.emigroup.com/About/Music/Default.htm>."

16 43. This notification was inadequate under the DMCA. The Notice did not specifically
 17 identify the material that is to be removed or access to which is to be disabled as required by 17
 18 U.S.C. § 512(c)(3)(A)(ii).

19 44. Moreover, some of the artists on Defendants' list and/or on Defendants' website are
 20 no longer represented by BMI; and some songs listed on the enclosure to the Notice are freely
 21 available for digital download. For example, the first band that is listed in Defendants' spreadsheet
 22 is "Air". MP3tunes features an "Air" track - "Once Upon A Time" - on the first page of
 23 sideload.com. That track is from the popular online music magazine, *Filter*, and is accessed by the
 24 URL <http://filter-mag.com/index.php?id=13977&c=6>. Thus, Plaintiff has no reason to believe that
 25 the *Filter* track is anything but lawful. Nevertheless, Plaintiff removed this track from availability
 26 for sideloading as per Defendants' demand.

27 45. Similarly, Defendants' list also includes the track "Nobody Move, Nobody Get Hurt"
 28 by the band "We Are Scientists" from the URL http://media.spin.com/features/band_of_the_day/

1 audio/2005/11/nobody_move_nobody_get_just_hi.mp3. *Spin* is a popular online music magazine.
2 All the labels distribute MP3s promotionally. Plaintiff believes that it is likely that this track is such
3 a promotional distribution and is lawfully available. The same is true for the tracks that Defendants
4 list from the *Paste Store*, which is a store which often distributes promotional tracks provided to
5 them. Nevertheless, Plaintiff removed these tracks from availability for sideloading as per
6 Defendants' demand.

7 46. Defendants knowingly materially misrepresented that certain material on the Sites —
8 such as the aforementioned material — was infringing in violation of 17 U.S.C. § 512(O)(1) when it
9 was not.

10 47. By sending the Notice, Defendants engaged in an unfair, deceptive, or illegal business
11 act or practice in that they were aware that their conduct violated 17 U.S.C. § 512(f); Defendants
12 routinely illegally engage in such practices to illegally and unfairly further their business interests.
13 Defendants will not stop these illegal practices unless and until they are enjoined by the Court.

14 48. Defendants' Notice was only directed towards tracks on Sideload.com, although it
15 sought relief with respect to Ober and consumers' lockers on MP3tunes.com. The list enclosed with
16 the Notice only specified allegedly infringing tracks that could be removed from Sideload.com and
17 did not specify any possible infringements within individual consumers' lockers.

18 49. The Sites are fully protected by the DMCA.

19 50. In connection with the transmitting, routing, or providing connections for, material
20 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
21 material in the course of such transmitting, routing or providing connections, the transmission of the
22 material found on the Sites is not initiated by or at the direction of Plaintiff and instead is initiated at
23 the direction of the user.

24 51. In connection with the transmitting, routing, or providing connections for, material
25 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
26 material in the course of such transmitting, routing or providing connections, the transmission,
27 routing, provision of connections, or storage of the material found on the Sites is carried out through
28 an automatic technical process without selection of the material by Plaintiff.

1 52. In connection with the transmitting, routing, or providing connections for, material
2 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
3 material in the course of such transmitting, routing or providing connections, Plaintiff does not select
4 the recipients of the material on its Sites, except as an automatic response to the request of another
5 person.

6 53. In connection with the transmitting, routing, or providing connections for, material
7 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
8 material in the course of such transmitting, routing or providing connections, no copy of the material
9 made by Plaintiff in the course of its intermediate and transient storage of the material on its Sites is
10 maintained on the system or network in a manner ordinarily accessible to anyone other than the
11 anticipated recipients, and no such copy is maintained on the system or network in a manner
12 ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary
13 for the transmission, routing, or provision of connections.

14 54. In connection with the transmitting, routing, or providing connections for, material
15 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
16 material in the course of such transmitting, routing or providing connections, the material on
17 Plaintiff's Sites is transmitted through the system or network without modification of its content.

18 55. In connection with the transmitting, routing, or providing connections for, material
19 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of that
20 material in the course of such transmitting, routing or providing connections, the material on
21 Plaintiff's Sites is made available online by a person or website other than Plaintiff's Sites. .

22 56. The intermediate and temporary storage of the material on the Sites is transmitted
23 from a person or website other than Plaintiff through the system or network to a user at the direction
24 of the user.

25 57. The intermediate and temporary storage of the material on the Sites is carried out
26 through an automatic technical process for the purpose of making the material available to users of
27 the system or network who, after the material is transmitted as described above, request access to the
28 material from the person described above.

1 58. The intermediate and temporary storage of the material on the Sites is transmitted to
2 the subsequent users without modification to its content from the manner in which the material was
3 transmitted from the person or website described above.

4 59. When Plaintiff learns the person or website set forth above has made material
5 available online without the authorization of the copyright owner of the material, Plaintiff responds
6 expeditiously to remove, or disable access to, the material that is claimed to be infringing upon
7 notification of claimed infringement.

8 60. Before receiving the Notice, Plaintiff did not have actual knowledge that the material
9 posted and/or stored on the Sites at the direction of users was infringing.

10 61. Plaintiff does not now have actual knowledge that the material posted and/or stored
11 on the Sites at the direction of users was infringing.

12 62. Before receiving the Notice, Plaintiff was not aware of facts or circumstances relating
13 to the material posted and/or stored on the Sites at the direction of users from which infringing
14 activity is apparent.

15 63. Plaintiff is not now aware of facts or circumstances relating to the material posted
16 and/or stored on the Sites at the direction of users from which infringing activity is apparent.

17 64. Upon obtaining knowledge or awareness that the material posted and/or stored on the
18 Sites at the direction of users is infringing, Plaintiff acts expeditiously to remove, or disable access
19 to, the allegedly infringing material and did so in this instance.

20 65. Plaintiff does not receive a financial benefit directly attributable to the material posted
21 and/or stored on the Sites at the direction of users and Plaintiff does not have the right and ability to
22 control such activity, other than to terminate the user's ability to use the Sites.

23 66. Upon notification of claimed infringement as described in 17 U.S.C. § 512(c)(3) as to
24 the material posted and/or stored on the Sites at the direction of users, Plaintiff responds
25 expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the
26 subject of infringing activity and has done so in this instance.

27 67. Plaintiff has designated an agent to receive notifications of claimed infringement
28 described in 17 U.S.C. § 512(c)(3).

1 68. When Plaintiff receives a notification that includes substantially the following it
 2 expeditiously complies with its obligations under the DMCA: (i) A physical or electronic signature
 3 of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 4 (ii) identification of the copyrighted work claimed to have been infringed; or, if multiple copyrighted
 5 works at a single online site are covered by a single notification, a representative list of such works
 6 at that site; (iii) identification of the material that is claimed to be infringing or to be the subject of
 7 infringing activity and that is to be removed or access to which is to be disabled, and information
 8 reasonably sufficient to permit the service provider to locate the material; (iv) information
 9 reasonably sufficient to permit the service provider to contact the complaining party, such as an
 10 address, telephone number, and, if available, an electronic mail address at which the complaining
 11 party may be contacted; (v) a statement that the complaining party has a good faith belief that use of
 12 the material in the manner complained of is not authorized by the copyright owner, its agent, or the
 13 law; and (vi) a statement that the information in the notification is accurate, and under penalty of
 14 perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right
 15 that is allegedly infringed.

16 69. Plaintiff does not now have actual knowledge that the Sites link users to online
 17 locations containing infringing material or activity and did not have such knowledge before
 18 receiving the Notice. When Plaintiff has such knowledge, Plaintiff acts expeditiously to remove, or
 19 disable access to, the material and did so in this instance.

20 70. Plaintiff is not now aware of facts or circumstances from which it is apparent that the
 21 Sites link users to online locations containing infringing material or activity and was not aware of
 22 such facts or circumstances before receiving the Notice. When Plaintiff becomes aware of such facts
 23 or circumstances, Plaintiff acts expeditiously to remove, or disable access to, the material and did so
 24 in this instance.

25 71. Plaintiff does not receive a financial benefit directly attributable to any link to online
 26 locations containing infringing material and Plaintiff does not have the right and ability to control
 27 such activity absent the overbroad termination of the user's ability to use the Sites.

28 72. Upon notification of claimed infringement as described in 17 U.S.C. § 512(c)(3) as to

1 any links the Sites have to online locations containing infringing material, Plaintiff responds
 2 expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the
 3 subject of infringing activity and has done so in this instance.

4 73. Plaintiff is an entity offering the transmission, routing, or providing of connections
 5 for digital online communications, between or among points specified by a user, of material of the
 6 user's choosing, without modification to the content of the material as sent or received and/or a
 7 provider of online services or network access, or the operator of facilities therefor.

8 74. Plaintiff did not and does not (1) directly infringe Defendants' copyrights; (2) have
 9 knowledge of any infringement of Defendants' copyrights; or (3) make a material contribution to
 10 any infringement of Defendants' copyrights.

11 75. Plaintiff did not and does not set up its Sites with the intent to encourage copyright
 12 infringement.

13 76. After receiving the Notice, despite its deficiencies, Plaintiff contacted Defendants'
 14 counsel and was informed that the matter was unlikely to be settled absent a substantial monetary
 15 payment.

16 77. In response to the Notice, on September 13, 2007, Plaintiff's counsel responded by:
 17 (i) notifying Defendants that its Notice was deficient (ii) notifying Defendants that the
 18 approximately 350 songs about which Defendants properly notified Plaintiff about had been
 19 removed from Sideload.com; and (iii) requesting that Defendants send a list of additional tracks to
 20 which EMI (and the labels it purports to represent) own the copyrights, provide information
 21 reasonably sufficient to permit Plaintiff to locate the material, and accurately represent that the listed
 22 tracks are not legally digitally available for copying (along with the remaining required elements of
 23 17 U.S.C. § 512(c)(3)(A)), so that Plaintiff could disable those songs from sideloading as well. A
 24 true and correct copy of this letter is attached hereto as Exhibit B.

25 78. On September 18, 2007, in response to the aforementioned letter, Defendants'
 26 counsel responded by claiming that Plaintiff's interpretation of the DMCA was wrong and that if
 27 "MP3tunes has made an informed decision to litigate the issue of its copyright liability, so be it."
 28 See Exhibit A.

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1 79. As a result, there exists a substantial controversy between Plaintiff and Defendants as
2 to whether Plaintiff's activities on MP3tunes.com, Sideload.com and Oboe will subject it to liability
3 to Defendants for copyright infringement.

FIRST CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

6 80. MP3tunes repeats and realleges paragraphs I through 73 above, as if fully set forth
7 herein.

8 81. Declaratory relief is warranted because the facts herein show that there is a
9 substantial controversy between parties having adverse legal interests, of sufficient immediacy and
10 reality to warrant relief. Specifically, there exists a substantial controversy between Plaintiff and
11 Defendants as to whether Plaintiff's activities constitute direct or indirect copyright infringement.

12 Accordingly, Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and
13 Rule 57 of the Federal Rules of Civil Procedure that: (i) MP3tunes.com and Sideload.com are
14 service providers as defined in the DMCA, 17 U.S.C. § 512(k); (ii) the conduct by MP3tunes.com
15 and Sideload.com challenged by Defendants in the Notice falls within the protections of §§ 512(a),
16 (b), (c) and/or (d); (iii) the Notice served on Plaintiff was deficient under 17 U.S.C. §§ 512(c) and/or
17 (d); (iv) to the extent the Notice was not deficient, Plaintiff complied with its obligations under 17
18 U.S.C. §§ 512(e) and/or (f); and (v) the activities of Sideload.com, MP3tunes.com and Oboe
19 complained of by Defendants in the Notice do not constitute direct copyright infringement,
20 contributory copyright infringement and/or inducement of copyright infringement.

SECOND CLAIM FOR RELIEF
(VIOLATION OF THE DMCA, 17 U.S.C. § 512(d))

23 83. MP3tunes repeats and realleges paragraphs 1 through 76 above, as if fully set forth
24 herein.

25 84. In its Notice, Defendants knowingly materially misrepresented that certain material
26 on the Sites was infringing in violation of 17 U.S.C. § 512(f)(1) when it was not.

27 85. Plaintiff has been injured by Defendants' misrepresentations because (1) it relied
28 upon such misrepresentations and removed or disabled access to the allegedly infringing material;

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1 and (2) Plaintiff was forced to bring this action as a result of the inaccuracies and deficiencies in
2 Defendants' Notice.

3 86. Pursuant to 17 U.S.C. § 512(f), as a result of such knowing material
4 misrepresentations, Defendants shall be liable for any damages, including costs and attorneys' fees,
5 incurred by Plaintiff.

THIRD CLAIM FOR RELIEF

(VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.)

87. MP3tunes repeats and realleges paragraphs 1 through 86 above, as if fully set forth
9 herein.

10 88. The Defendants' acts hereinabove alleged are acts of unfair, unlawful, or deceptive
11 business acts or practices within the meaning of Business and Professions Code Section 17200, et
12 seq.

13 89. Plaintiff is informed and believes that the Defendants will continue to do those acts
14 unless the Court orders them to cease and desist.

15 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and
16 against Defendants, as follows:

A. On the First Claim for Relief, a declaratory judgment that:

(i) MP3tunes.com and Sideload.com are service providers as defined in the

¹⁹ DMCA, 17 U.S.C. § 512(c);

(ii) the conduct by MP3tones.com and Sideload.com challenged by Defendants

the Notice falls within the protections of §§ 512(a), (b), (c) and/or (d);

(iii) the Notice served on Plaintiff was deficient under 17 U.S.C. §§ 512(c) and/or

24 (iv) to the extent the Notice was not deficient, Plaintiff complied with its
25 obligations under 17 U.S.C. §§ 512(c) and/or (d); and

(v) the activities of Sideload.com, MP3tunes.com and Oboe complained of by Defendants in the Notice do not constitute direct copyright infringement, contributory copyright infringement and/or inducement of copyright infringement; and

1 B. On the Second Claim for Relief, awarding Plaintiff its damages, including its
2 costs and attorneys' fees pursuant to 17 U.S.C. § 512(f)(1); and

3 C. On the Third Claim for Relief:

4 (i) entering a temporary and permanent injunction prohibiting Defendants and the
5 Defendants' agents, servants, and employees, and all persons acting under or in concert with them,
6 to cease and desist from engaging in unfair, unlawful, or deceptive business acts or practices as
7 herein alleged in violation of California Business and Professions Code §17200, et seq.;

8 (ii) ordering defendants to disgorge any profits that they have earned as a result of
9 their illegal activities;

10 (iii) awarding Plaintiff its actual damages;

11 (iv) an additional award to Plaintiff of treble damages according to statute; and

12 (v) awarding Plaintiff its costs and attorneys' fees.

13 D. Granting Plaintiff such other, further and different relief as the nature of the
14 case may require or as may be determined to be just, equitable, and proper by this Court.

15 Dated: December 3, 2007 DUANE MORRIS LLP

16 By: s/Edward M. Cramp

17 Edward M. Cramp

18 Michelle Hon

19 Attorneys for MP3TUNES, LLC

20 JURY DEMAND

21 Plaintiff demands a trial by jury on all issues so triable.

22 Dated: December 3, 2007 DUANE MORRIS LLP

23 By: s/Edward M. Cramp

24 Edward M. Cramp

25 Michelle Hon

26 Attorneys for MP3TUNES, LLC

1 Daniel C. Minteer (SBN 62158)
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5
6 Attorneys for MP3TUNES, LLC

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MP3TUNES, LLC,

11 Plaintiff,

12 v.

13 EMI GROUP, LTD; et al.,

14 Defendants.

15 Case No.: 07CV1844WQH (NLS)

16 DECLARATION OF SERVICE

17 Judge: William Q. Hayes
Complaint Filed: September 20, 2007

18 I am a resident of the state of California, I am over the age of 18 years, and I am not a party
19 to this lawsuit. My business address is 101 West Broadway, Suite 900, San Diego, California
20 92101. On the date listed below, I served the document(s) entitled: AMENDED COMPLAINT
21 FOR DECLARATORY JUDGMENT AND VIOLATION OF THE DIGITAL MILLENNIUM
22 COPYRIGHT ACT; VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
23 CODE SECTION 17200; DEMAND FOR JURY TRIAL.

24 via electronic service to the attorneys of record on file with the U.S. District Court for this
25 case, as follows:

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1 Bennett Bigman
bbigman@dskllp.com
2 DREIER STEIN & KAHAN LLP
1620 26th Street
3 Sixth Floor, North Tower
Santa Monica, CA 90404-4060
4 (310) 828-9050
5 (310) 828-9101

Attorneys for Plaintiff

6 I declare under penalty of perjury under the laws of the State of California that the above is
7 true and correct.

8 Executed December 3, 2007, at San Diego, California.

9
10 Diane M. Koski
11 Diane M. Koski
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EXHIBIT A

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JENNER & BLOCK

VIA OVERNIGHT MAIL

September 4, 2007

MP3Tunes, LLC
5960 Concourse Court
Plaza Floor
San Diego, CA 92121

Attn: Emily Richards

Re: EMI Music Group/Infringement of Copyrighted Works

Dear Mr. Richards:

We are counsel for EMI Music Group North America, whose record labels include (but are not limited to) Capitol, Priority, Blue Note, R&B, Virgin, and Asylum-works (collectively, "EMI"). EMI is the owner of copyright, exclusive rights under copyright or related common law and statutory rights, in sound recordings. Among the recordings whose rights are owned by EMI are some of the most popular recordings in the world, including recordings by the Beatles, the Beach Boys, the Beach Boys, Coldplay, David Bowie, Norah Jones, Lenny Kravitz, Radiohead, the Red Hot Chili Peppers, Tina Turner, and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sidecloud.com, and its "Open Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, buffering, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted recordings in violation of the Copyright Act. For example, MP3Tunes.com provides links (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Open Software Suite" and the "Open Sidecloud Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sidecloud.com, MP3Tunes' users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideclouds" the selected music from the source site into the user's Open locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideclouds" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless audio recordings of EMI artists, such as Coldplay's "Clocks" or Radiohead's "Karma Police." All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using the names of virtually every other EMI artist returned similar results. However, EMI has not authorized any of its recordings to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

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Emily Richards
September 4, 2007
Page 2

As you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries, International law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbor" of the Digital Millennium Copyright Act ("DMCA").

Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," fails within any of the enumerated categories of Section 512(c)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and URL location, a representative sample, pursuant to 17 U.S.C. § 512(o)(3)(A)(ii), of EMI's copyrighted works that are copied, performed, stored, disseminated, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or provider of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI recordings that have been copied, performed or distributed by MP3Tunes, including the number of times each recording has been accessed by MP3Tunes users.

The enclosed representative list reflects only a small portion of the total number of infringing EMI works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(o)(3)(A)(ii), based on EMI's representative list, MP3Tunes is obligated to remove all of EMI's copyrighted works, even those not specifically identified on the attached. A non-exhaustive further listing of EMI's recording action can be found at <http://www.emiproxy.com/AboutMusicDefinitions.html>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI copyrighted recordings, remain unavailable on or through MP3Tunes.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI as set forth in this letter.

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Billy Richards
September 4, 2007
Page 3

Your immediate attention to this letter is required. Nothing herein is intended to or shall be construed as a waiver of any of BMG's rights and remedies, all of which hereby are expressly reserved.

Very truly yours,

Steven S. Rubinstein

Enclosure

cc: Alexander McMillan, Esq.
Scott Bahnhof, Esq.
BMG Music North America

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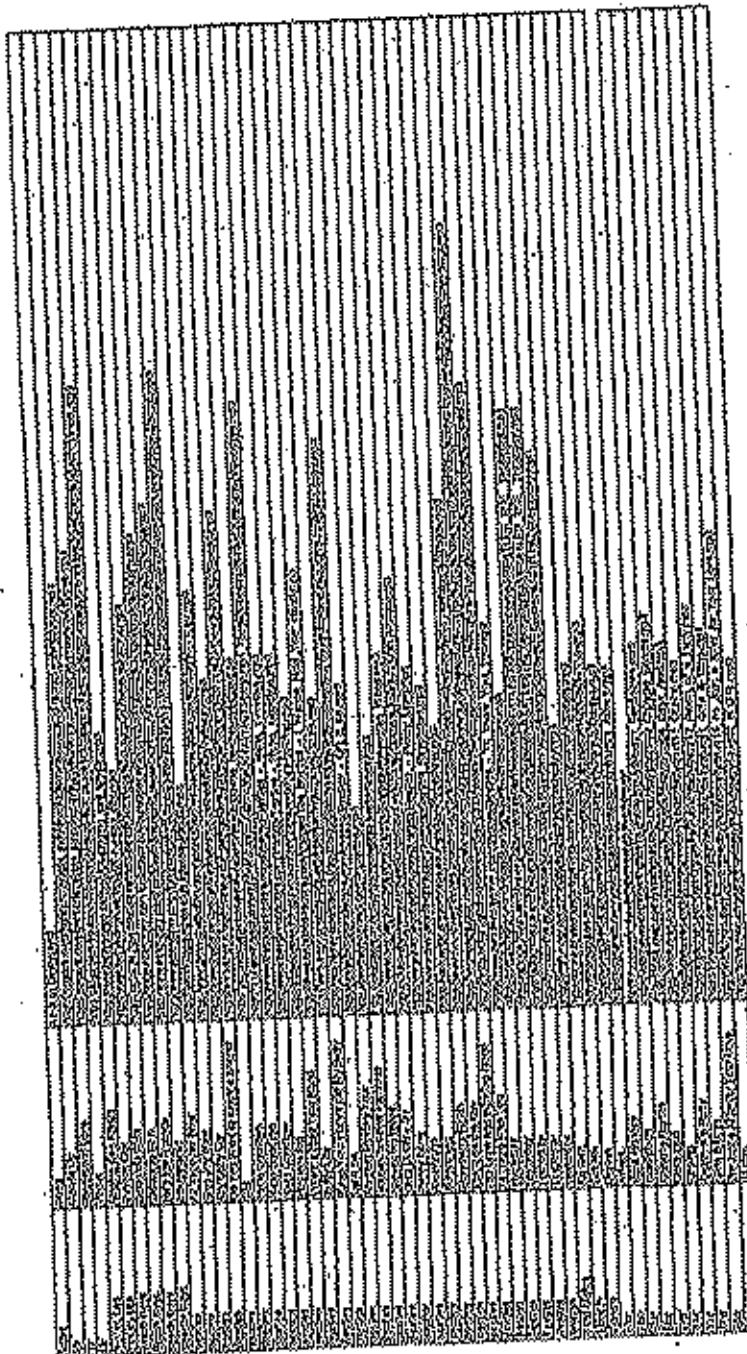


Exhibit A - 04

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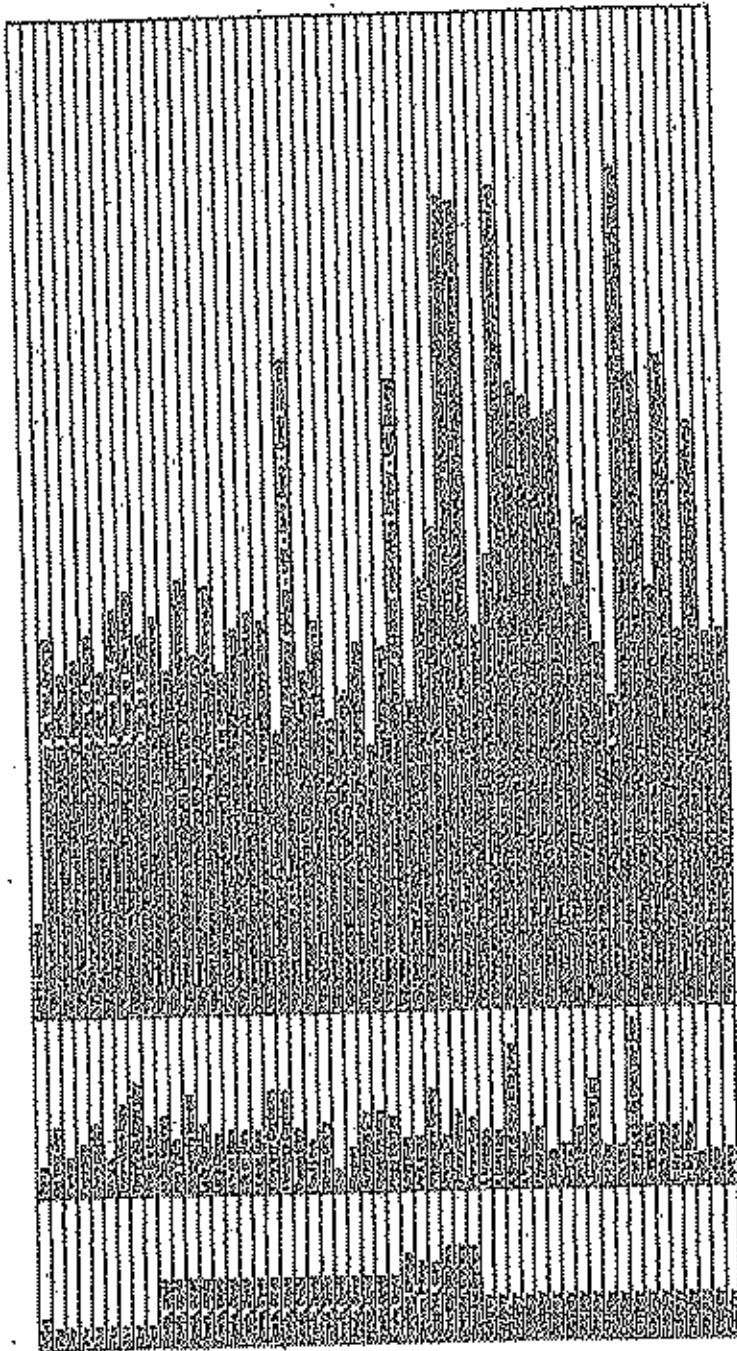


Exhibit A - 05

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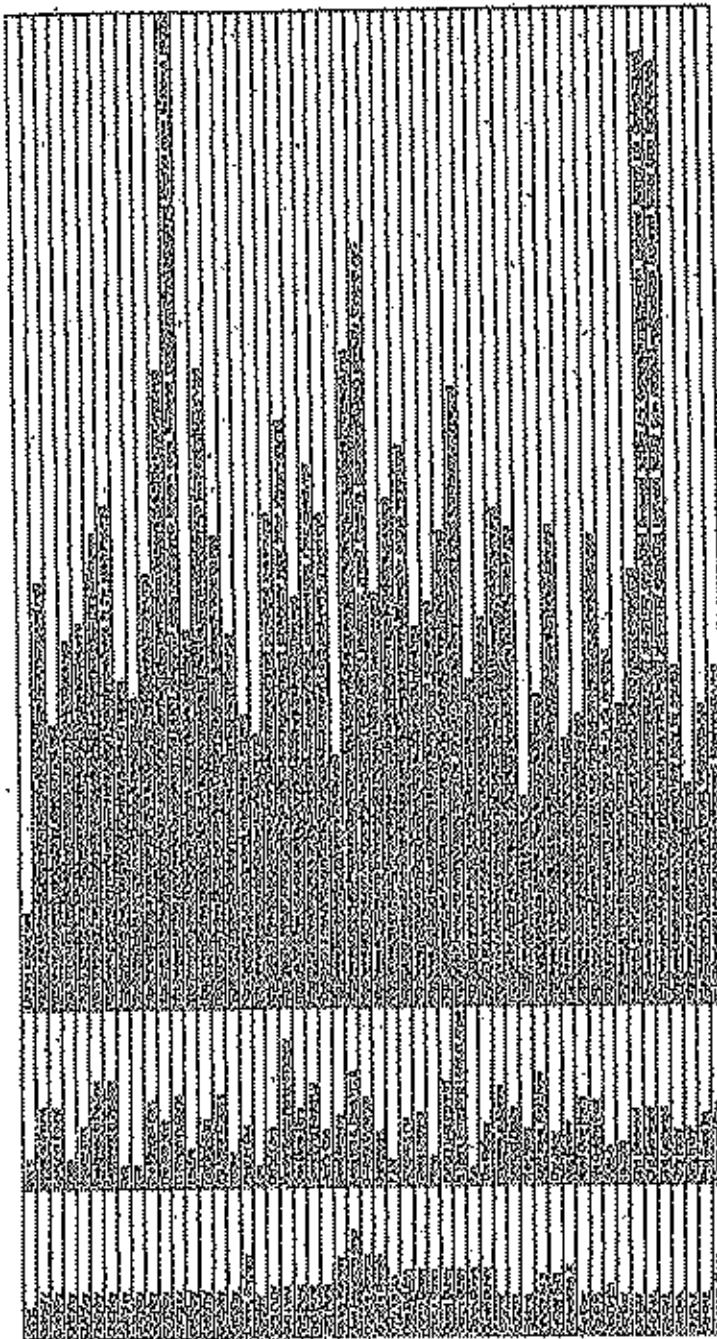


Exhibit A -- 06

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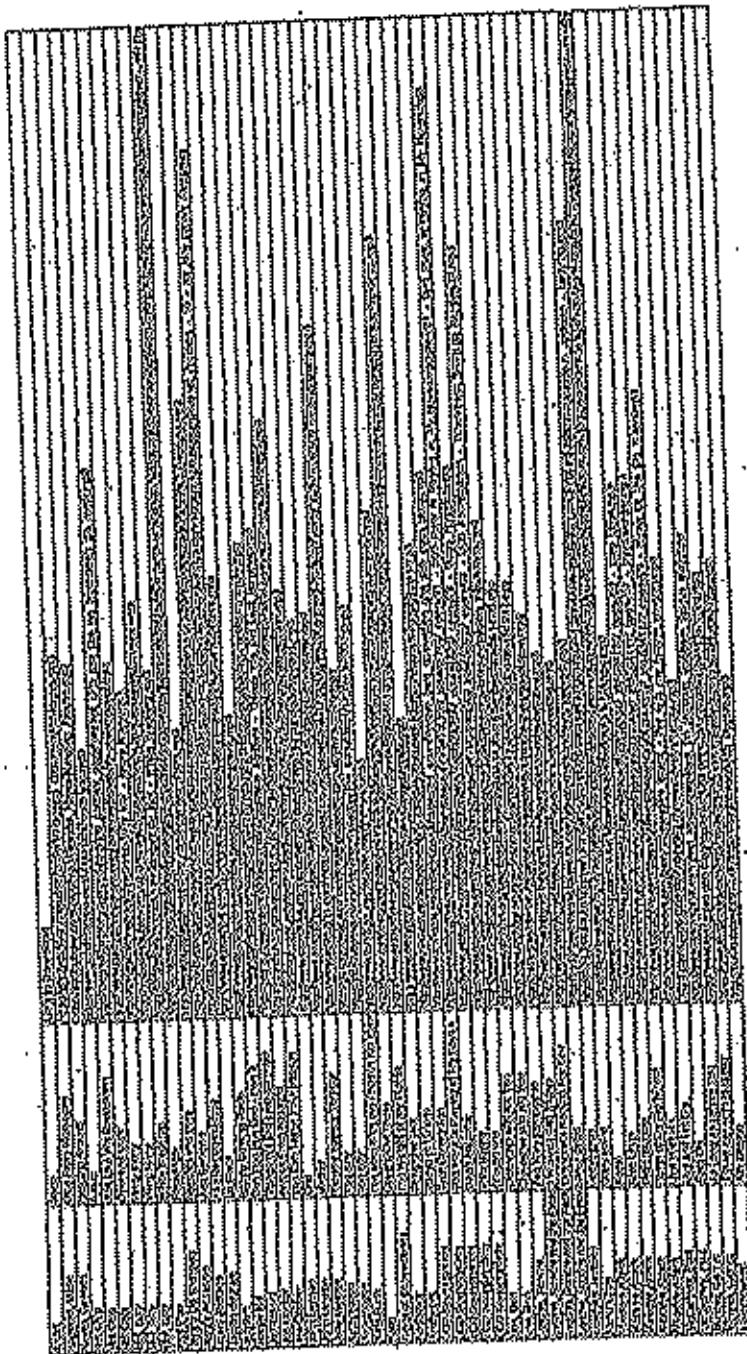


Exhibit A -- 07

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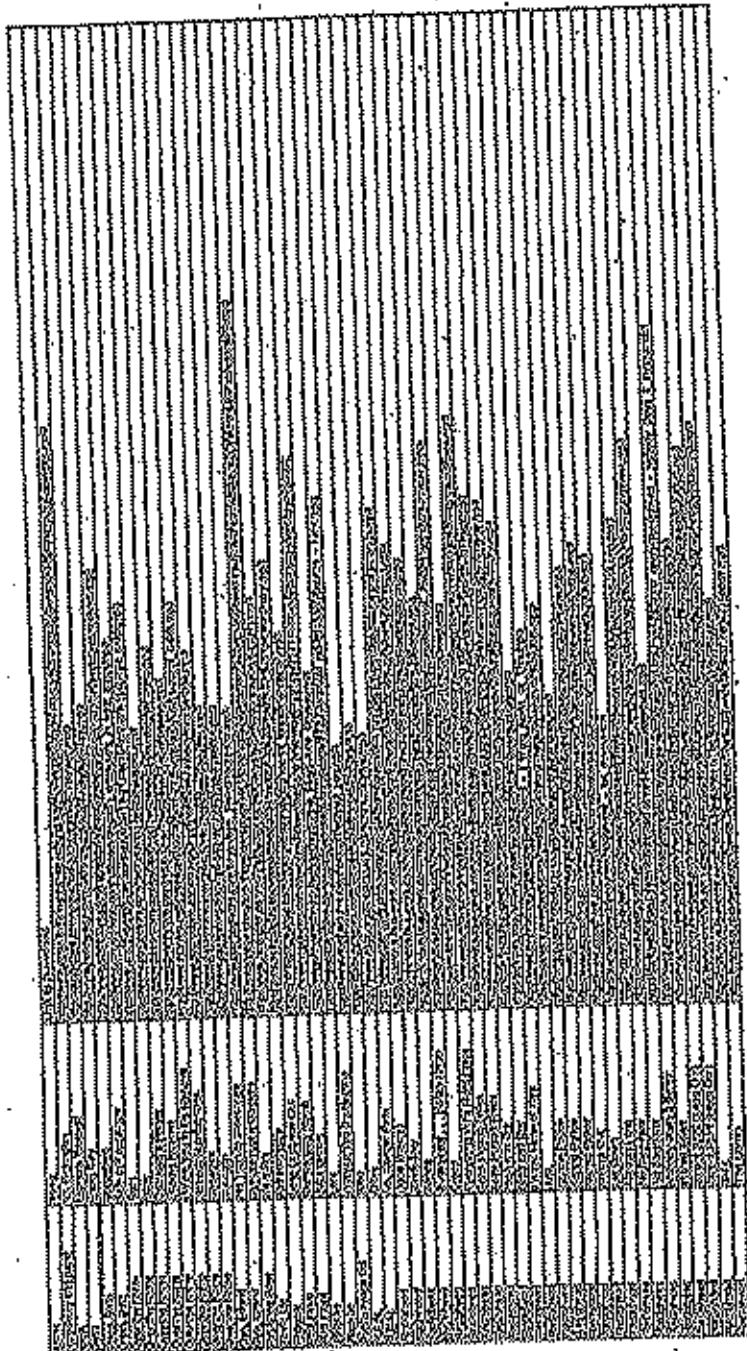


Exhibit A -- 08

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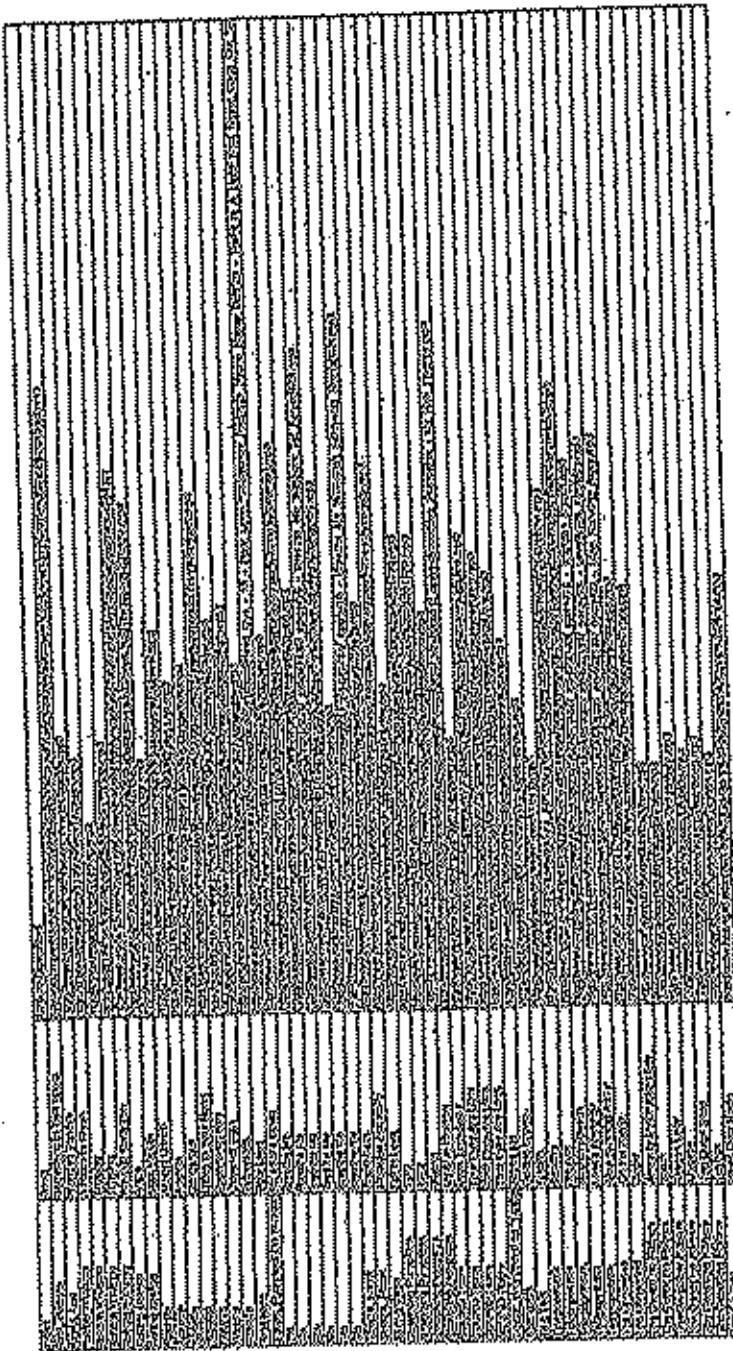


Exhibit A -- 09

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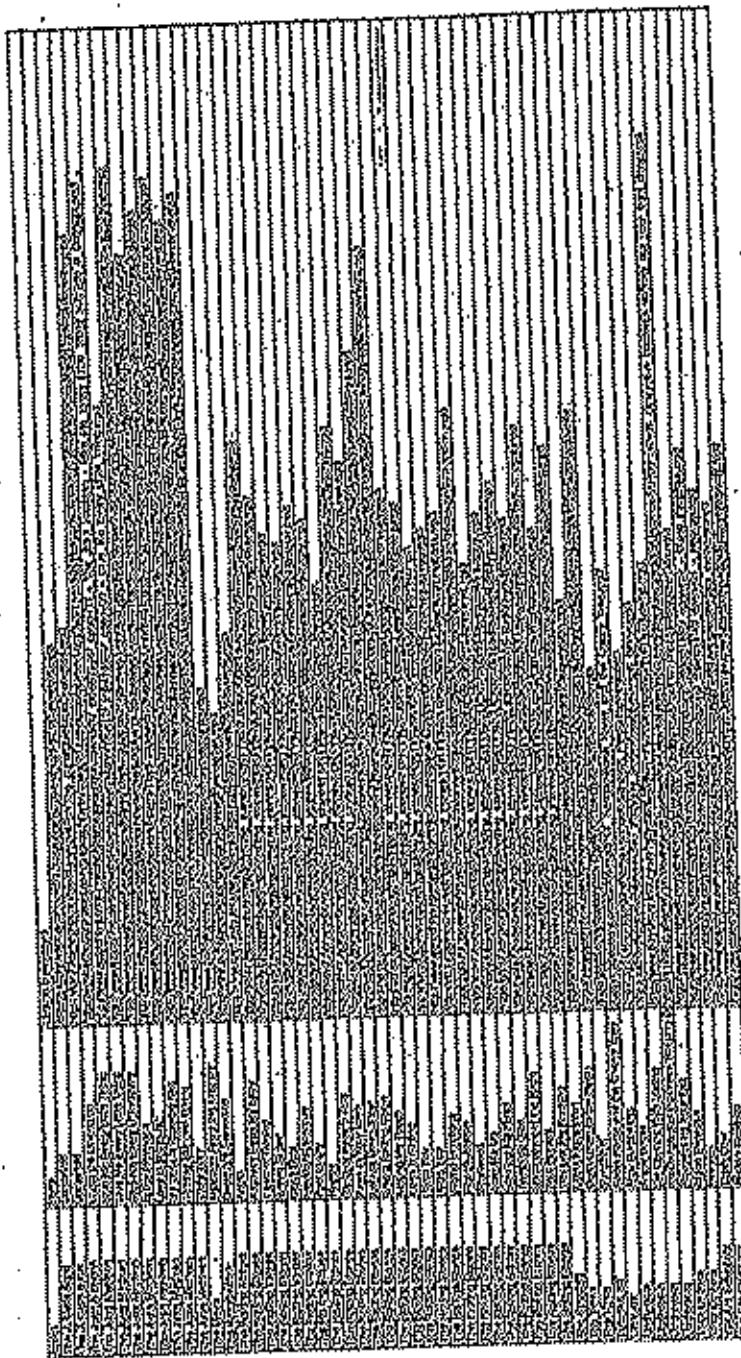


Exhibit A -- 10

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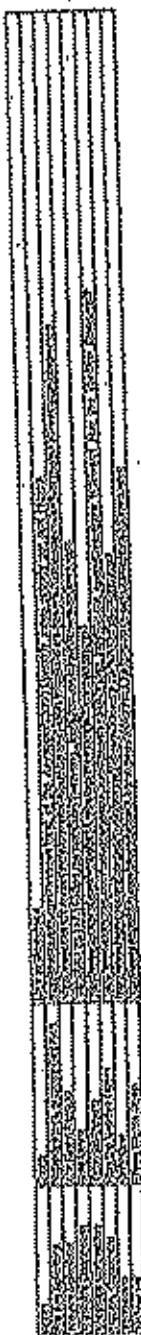


Exhibit A - 11

DREIER LLP

ATTORNEYS AT LAW

The Oakley Group

Ira S. Sack, Partner
Direct: 212 652 5230
isacks@dreierllp.com

September 13, 2007

VIA FEDERAL EXPRESS

Steven B. Fabrizio, Esq.
Jenner & Block LLP
601 Thirteenth Street, NW
Suite 1200 South
Washington, DC 20005-3823

Re: MP3tunes, LLC

Dear Mr. Fabrizio,

We represent MP3tunes, LLC ("MP3tunes"). We write in response to your cease-and-desist letter, dated September 4, 2007 to MP3tunes, regarding your allegations that MP3tunes, through its websites, MP3tunes.com and Sideload.com, and its "Oboe Software Suite" is "copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of [your] client's copyrighted recordings in violation of the Copyright Act."

While we find your allegations baseless and believe that you failed to comply with the requirements of the Digital Millennium Copyright Act ("DMCA") when notifying our client of its alleged infringement, in an effort to resolve this matter and to fulfill our obligations under the DMCA, MP3tunes has removed the approximately 350 songs you provided with your cease-and-desist letter from availability for sideloading. If you provide another list with additional songs to which BMI and/or its affiliates represent they own the copyrights, MP3tunes will promptly remove those songs from availability for sideloading as well.

BMI needs to understand the function of MP3tunes and sideload.com. MP3tunes plays no role in what songs are designated for sideload.com by users of MP3tunes. None of the songs designated by users for sideloading are physically available on sideload.com. Rather, what is provided is a hyperlink.

Notwithstanding MP3tunes' continued willingness to resolve this matter amicably, your attempt to place the burden on MP3tunes to determine which of the songs on its website

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Telephone 212 620 6100 Facsimile 212 620 6101
Los Angeles Stamford Albany
www.dreierllp.com

Steven B. Fabrizio, Esq.
 September 13, 2007
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are infringing simply by providing (i) a link to the EMI website which provides a "non-exhaustive further listing of EMI's recording artists" and (ii) a representative list of songs which you demand be disabled, fails to comply with EMI's obligations under the DMCA. What is more, having quickly analyzed the list of songs that you attached to your letter, we believe that your assertion that "EMI has not authorized any of its recordings to be copied, distributed or performed" as is done on sideload.com and that "EMI has a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents or the law" is factually incorrect.

First, your notice is inadequate under the DMCA. Specifically, as you know, the 17 U.S.C. § 512(e)(3)(A) provides that:

To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing, or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

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Steven B. Fabrizio, Esq.
September 13, 2007
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Thus, while you correctly supplied a representative list of multiple copyrighted works located on a single site in your notification as per 17 U.S.C. § 512(o)(3)(A)(ii), you still must comply with the requirements of § 512(c)(3)(A)(iii) – that is, you must specifically identify the material that is to removed or access to which is to be disabled. A representative list such as the one you have provided is insufficient to comply with 17 U.S.C. § 512(o)(3)(A)(iii).

Moreover, we believe that some of the artists on your list and/or on your website are no longer represented by BMI, and that some songs you listed are freely available for digital download. For example, the first band that is listed in your spreadsheet is "Air". MP3tunes features an "Air" track – "Once Upon A Time" – on the first page of sideload.com. That track is from the popular online music magazine, *Filter*, and is accessed by the URL <http://filter-mag.com/index.php?id=13977&cc=6>. We have no reason to believe that the Filter track is anything but lawful.

Similarly, your list also includes the track "Nobody Move, Nobody Get Hurt" by the band "We Are Scientists" from the URL http://media.spin.com/features/band_of_the_day/audio/2005/11/nobody_move_nobody_get_hurt_hi.mp3. *Spin* is a popular online music magazine. All the labels distribute MP3s promotionally. We believe that it is likely that this track is such a promotional distribution and is lawfully available. The same is true for the tracks that you list from the *Paste Store*, which is a store which often distributes promotional tracks provided to them.

Nonetheless, as previously stated, if you send us a list of additional tracks to which BMI and its affiliates own the copyrights, provide information reasonably sufficient to permit our client to locate the material, and accurately represent that the listed tracks are not legally digitally available for copying (along with the remaining required elements of 17 U.S.C. § 512(c)(3)(A)), MP3tunes will disable those songs from sideloading as well.

Please feel free to contact me if you would like to discuss this matter further. This letter is written without prejudice to the rights, claims and/or defenses of MP3tunes or its affiliates, all of which are hereby expressly reserved.

Sincerely,


Ira S. Sacks

ISS/cs
cc: Michael Robertson (via email)

Title	Primary Artist	Sideload song page
Crazy	Aerosmith	http://www.sideload.com/cb/track/?id=130780
Jaded	Aerosmith	http://www.sideload.com/cb/track/?id=270438
Janie's Got A Gun	Aerosmith	http://www.sideload.com/cb/track/?id=284652
Remember When	Alan Jackson	http://www.sideload.com/cb/track/?id=233780
Fallin'	Alicia Keys	http://www.sideload.com/cb/track/?id=100602
If I Ain't Got U	Alicia Keys	http://www.sideload.com/cb/track/?id=265787
Karma	Alicia Keys	http://www.sideload.com/cb/track/?id=326867
A Certain Romance	Arctic Monkeys	http://www.sideload.com/cb/track/?id=332348
Brainstorm	Arctic Monkeys	http://www.sideload.com/cb/track/?id=239716
Fake Tails of San Fran	Arctic Monkeys	http://www.sideload.com/cb/track/?id=108971
I Bet You Look Good On	Arctic Monkeys	http://www.sideload.com/cb/track/?id=93254
Mardy Bum	Arctic Monkeys	http://www.sideload.com/cb/track/?id=282689
The View From The Edge	Arctic Monkeys	http://www.sideload.com/cb/track/?id=182789
When The Sun Goes Down	Arctic Monkeys	http://www.sideload.com/cb/track/?id=182792
This House Is A Circus	Arctic Monkeys	http://www.sideload.com/cb/track/?id=271963
Teddy Picker	Arctic Monkeys	http://www.sideload.com/cb/track/?id=243874
Big Shot	Billy Joel	http://www.sideload.com/cb/track/?id=280474
Brenda and Eddie	Billy Joel	http://www.sideload.com/cb/track/?id=274458
You May Be Right	Billy Joel	http://www.sideload.com/cb/track/?id=63420
Dammit	Blink 182	http://www.sideload.com/cb/track/?id=281572
Adam's Song	Blink 182	http://www.sideload.com/cb/track/?id=308180
What's My Age Again?	Blink 182	http://www.sideload.com/cb/track/?id=96754
Anthem	Blink 182	http://www.sideload.com/cb/track/?id=309195
100 Years	Five for Fighting	http://www.sideload.com/cb/track/?id=230944
Everlong	Foo Fighters	http://www.sideload.com/cb/track/?id=144914
Wallershed	Foo Fighters	http://www.sideload.com/cb/track/?id=118309
Weenies Beenie	Foo Fighters	http://www.sideload.com/cb/track/?id=118311
In The Air Tonight	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=308344
Against All Odds (Take	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=216030
Abacab	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=321906
Keep It Dark	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=321894
Mama	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=301391
The Lamb Lies Down On	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=321895
Paperlate	Genesis/Phil Collins	http://www.sideload.com/cb/track/?id=321902
I Heard It Through The Gladys Knight	Goo Goo Dolls	http://www.sideload.com/cb/track/?id=263174
Iris	Goo Goo Dolls	http://www.sideload.com/cb/track/?id=227208
Slide	James Blunt	http://www.sideload.com/cb/track/?id=21181
Out of My Mind	James Blunt	http://www.sideload.com/cb/track/?id=174541
Tears and Rain	James Blunt	http://www.sideload.com/cb/track/?id=205650
Fire and Rain	James Taylor	http://www.sideload.com/cb/track/?id=315822
Jack and Diane	John Mellencamp	http://www.sideload.com/cb/track/?id=143946
Over the Rainbow	Judy Garland	http://www.sideload.com/cb/track/?id=242634
Wuthering Heights	Kate Bush	http://www.sideload.com/cb/track/?id=288007
Hang	Matchbox 20	http://www.sideload.com/cb/track/?id=210570
Real World	Matchbox 20	http://www.sideload.com/cb/track/?id=233788
Bent	Matchbox 20	http://www.sideload.com/cb/track/?id=198505
Dumb	Nirvana	http://www.sideload.com/cb/track/?id=195788
Lithium	Nirvana	http://www.sideload.com/cb/track/?id=227660
All Apologies	Nirvana	http://www.sideload.com/cb/track/?id=204646
Come As You Are	Nirvana	http://www.sideload.com/cb/track/?id=222532
Very Axe	Nirvana	http://www.sideload.com/cb/track/?id=297161

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Be My Somebody	Norah Jones	http://www.sideload.com/cb/track/?id=223070
Broken	Norah Jones	http://www.sideload.com/cb/track/?id=223004
Little Room	Norah Jones	http://www.sideload.com/cb/track/?id=223067
Not Too Late	Norah Jones	http://www.sideload.com/cb/track/?id=223007
Wake Me Up	Norah Jones	http://www.sideload.com/cb/track/?id=233509
Close My Eyes Forever	Ozzy Osbourne	http://www.sideload.com/cb/track/?id=283192
Trouble	Pink	http://www.sideload.com/cb/track/?id=261190
Bicycle Race	Queen	http://www.sideload.com/cb/track/?id=168834
Crazy Little Thing Called	Queen	http://www.sideload.com/cb/track/?id=326156
We Are The Champions	Queen	http://www.sideload.com/cb/track/?id=281663
Beller	Regina Spektor	http://www.sideload.com/cb/track/?id=106343
Edit	Regina Spektor	http://www.sideload.com/cb/track/?id=226559
Fidelity	Regina Spektor	http://www.sideload.com/cb/track/?id=104940
Lady	Regina Spektor	http://www.sideload.com/cb/track/?id=226554
On The Radio	Regina Spektor	http://www.sideload.com/cb/track/?id=235902
Semson	Regina Spektor	http://www.sideload.com/cb/track/?id=178874
Superfreak	Rick James	http://www.sideload.com/cb/track/?id=243593
Diamonds Are Forever	Shirley Bassey	http://www.sideload.com/cb/track/?id=242256
ABC	The Jackson 5	http://www.sideload.com/cb/track/?id=207411
Papa Gene's Blues	The Monkees	http://www.sideload.com/cb/track/?id=332242
Don't Stand So Close To	The Police	http://www.sideload.com/cb/track/?id=300023
Every Breath You Take	The Police	http://www.sideload.com/cb/track/?id=99058
Message In A Bottle	The Police	http://www.sideload.com/cb/track/?id=224522
Roxanne	The Police	http://www.sideload.com/cb/track/?id=15209
Synchronicity II	The Police	http://www.sideload.com/cb/track/?id=287778
The Bed's Too Big With	The Police	http://www.sideload.com/cb/track/?id=320807
Truth Hits Everybody	The Police	http://www.sideload.com/cb/track/?id=287781
Angie	The Rolling Stones	http://www.sideload.com/cb/track/?id=132462
Hof Stuff	The Rolling Stones	http://www.sideload.com/cb/track/?id=274374
Start Me Up	The Rolling Stones	http://www.sideload.com/cb/track/?id=106173
Ain't Too Proud To Beg	The Temptations	http://www.sideload.com/cb/track/?id=253179
A Box Full of Sharp Obj	The Used	http://www.sideload.com/cb/track/?id=280210
All That I've Got	The Used	http://www.sideload.com/cb/track/?id=280196
I Caught Fire (In Your E)	The Used	http://www.sideload.com/cb/track/?id=280194
I'm A Feke	The Used	http://www.sideload.com/cb/track/?id=280192
Take It Away	The Used	http://www.sideload.com/cb/track/?id=280193
Light With A Sharpened	The Used	http://www.sideload.com/cb/track/?id=280200
Let It Bleed	The Used	http://www.sideload.com/cb/track/?id=280208
Unpretty	TLC	http://www.sideload.com/cb/track/?id=176489
Lateralus	Tool	http://www.sideload.com/cb/track/?id=227903
Sober	Tool	http://www.sideload.com/cb/track/?id=310240
The Pot	Tool	http://www.sideload.com/cb/track/?id=203604
Vicarious	Tool	http://www.sideload.com/cb/track/?id=227908
Jambl	Tool	http://www.sideload.com/cb/track/?id=227904
Fast Car	Tracy Chapman	http://www.sideload.com/cb/track/?id=252030
Talkin' 'Bout A Revolution	Tracy Chapman	http://www.sideload.com/cb/track/?id=270431
For My Lover	Tracy Chapman	http://www.sideload.com/cb/track/?id=301787
Baby Can I Hold You	Tracy Chapman	http://www.sideload.com/cb/track/?id=207480
Duelin' Banjos	Tracy Chapman	http://www.sideload.com/cb/track/?id=187736

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Digitized by srujanika@gmail.com

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September 13, 2007

VIA ELECTRONIC MAIL
AND U.S. MAIL

Ira S. Sacks, Esq.
Dreier LLP
499 Park Avenue
New York, NY 10022

Re: *MP3tunes Infringement of BMI Works*

Dear Mr.

Thank you for your letter of September 13, 2007. It is not our intention to engage in an extended exchange of letters. However, because your client appears to fundamentally misunderstand the DMCA, in an effort to avoid litigating born of misunderstanding, we offer the four observations set forth below. Beyond that, we invite MP3tunes to make a substantive proposal how to redress past infringement of BMI works and to ensure that there will be no future infringement of BMI works. When Michael Robertson and I spoke last week, it was my impression that MP3tunes would be making such a proposal. If MP3tunes does not intend to make a meaningful proposal to resolve this matter, kindly let us know and we will proceed accordingly.

As for the substance of your September 13 letter:

- o First, specifically, you are simply wrong in your interpretation of the DMCA. While you correctly recite the text of § 512(c)(3), you completely ignore § 512(d), which addresses information location tools. To the extent MP3tunes can take advantage of the DMCA at all, it must respond to notices compliant under § 512(d). As you undoubtedly know, § 512(d)(3) expressly modifies § 512(c)(3)(A)(ii) on the very issue of alleged non-compliance you raise in your letter. In relevant part, § 512(d)(3) provides that for purposes of § 512(d):

the information described in subsection (c)(3)(A)(ii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

17 U.S.C. § 512(d)(3) (emphasis added); see also S.R. Rep. No. 105-190, at 47-48 (1998) ("The reference to 'infringing activity' is intended to refer to wrongful activity that is occurring at the

Ira S. Seiden, Esq.
 September 18, 2007
 Page 2

location to which the link or reference refers ... [and] the information submitted by the complaining party under subsection (c)(3)(A)(iii) is identification of the reference or link to infringing material or activity"). Accordingly, our notice is absolutely compliant with the DMCA in all respects.

o Second, we agree with the acknowledgement in your September 13 letter, at page 3, that we have "correctly supplied a representative list of multiple copyrighted works located on a single site in [our] notification as per 17 U.S.C. § 512(c)(A)(ii)." MP3tunes, however, does not appear to grasp the legal implications of this. The DMCA does not provide "safe harbor" just because a service provider responds to a notification by blocking access to the specifically identified works on a representative list. The statutory text and the legislative history make crystal clear that, once a copyright holder has provided a compliant "representative list" of its works, the obligation shifts to the service provider to remove or disable access to *all* copyrighted works owned by that copyright holder. The pertinent legislative history is as follows:

Where multiple works of a single online site are covered by a single notification, *a representative list of those works at that site is sufficient*. Thus, where a party is operating an unauthorized Internet jukebox from a particular site, it is not necessary for a compliant notification to list every musical composition or sound recording that has been or could be infringed at that site, so long as a representative list of those compositions or recordings is provided so that the service provider can understand the nature and scope of the infringement being claimed.

S.R. Rep. No. 105-390, at 46 (emphasis added); H.R. Rep. No. 105-553, at 55 (1998) (same); see also, e.g., *ALS Comm., Inc. v. Memory Communications, Inc.*, 229 F.3d 619, 625 (4th Cir. 2001) (DMCA safe harbor "is not presumptive, but granted only to 'innocent' service providers who can prove they do not have actual or constructive knowledge of the infringement"; eligibility for safe harbor "disappears at the moment the service provider loses its innocence, i.e., at the moment it becomes aware that a third party is using its system to infringe"). Therefore, MP3tunes' commitment to remove the specific links identified on our representative list is not an act of compliance, but rather an acknowledgement of non-compliance. EMI has provided more than sufficient notice such that MP3tunes can understand the nature and scope of the infringement being claimed. If MP3tunes wishes any argument as to compliance with § 512(b)(3), it must act accordingly. As observed below, it has not.

o Third, as of this morning, tens of thousands of EMI works, including works that were identified in our notice, and the works of EMI artists who were identified in the notice, continue to be infringed by and through MP3tunes. MP3tunes is liable for each of these infringements.

o Fourth, many in your client's position conveniently view the DMCA as providing safe harbor as long as copyright infringement notices are appropriately responded to. That is not correct. Whether or not notices are sent to or responded to by a service provider, the DMCA

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Ira B. Sacks, Esq.
September 12, 2007
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discharges a service provider from all safe harbor if that service provider either: (i) has "actual knowledge that the material or activity is infringing," 17 U.S.C. § 512(d)(1)(A); or (ii) is "aware of facts or circumstances from which infringing activity is apparent," 17 U.S.C. § 512(g)(1)(B); or (iii) "receives[] a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity." 17 U.S.C. § 512(d)(2). Separate and apart from its failure to comply with BMI's notice, MP3tunes would be disqualified from DMCA safe harbor based on each of these provisions. Moreover, in addition to BMI works that are protected under the federal copyright laws, MP3tunes infringes and is responsible for the infringement of noncopyrightable BMI works that were first fixed prior to February 1972 ("pre-72 works") and which are protected under state law. E.g., *Capitol Records, Inc. v. Nation of America, Inc.*, 4 N.Y.3d 548, 830 N.B.2d 250 (N.Y. 2005). As the DMCA is a provision of the United States Copyright Act, it provides no copyrightable protection for MP3tunes' infringement of BMI's pre-72 works.

"The complex norms of cybertooth communications may create difficult legal issues, but not in this case." *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349, 350 (S.D.N.Y. 2000) (Rakoff, J.). Judge Rakoff's comment is equally applicable here. MP3tunes is building a business by leveraging the popularity of creative works that MP3tunes did not create and does not own. It will be held liable for copyright infringement under federal and state law.

If MP3tunes has made an informed decision to litigate the issue of its copyright liability, so be it. If, on the other hand, MP3tunes has a meaningful proposal to make for an overall resolution, the time to make it is now.

Finally, BMI is compelled to expressly reserve all of its rights with respect to the conflict of interest you raise. Dreier LLP, has in representing MP3tunes in a matter adverse to BMI. Dreier LLP currently is representing BMI's affiliate, Caroline Records, Inc., in an ongoing litigation in the New York State Supreme Court captioned *Caroline Records v. Select*. The rules of professional conduct governing lawyers practicing in New York prohibit Dreier LLP from acting adverse to its BMI client/client receiving an express waiver from BMI, which Dreier LLP has neither sought nor received.

Yours truly,

Steven B. Fabrizio

cc: Ainslie McMillan, Esq.
Scott Schreiber, Esq.
BMI Music North America

Andrew H. Bart, Esq.
Thomas J. Perrone, Esq.
Jenner & Block LLP

J EN N E R & B L O C K

October 25, 2007

BY OVERNIGHT DELIVERY

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Re: EMI Records / Infringement of Copyrighted Works

Dear Ms. Richards:

We are counsel for EMI Music Group North America, whose record labels include (but are not limited to) Capitol, Priority, Blue Note, EMI, Virgin, Astralwerks (collectively, "EMI"). EMI is the owner of copyright, exclusive rights under copyright, or related common law and statutory rights, in sound recordings. Among EMI's copyrights are works of some of the world's most popular artists, including The Beatles, David Bowie, Coldplay, and many others..

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Oboe Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted works in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Oboe Software Suite" and the "Oboe Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes' users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Oboe locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless works by EMI artists. All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using recordings by other EMI artists returned similar results. However, EMI has not authorized any of its works to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries, international law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

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International law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," falls within any of the enumerated categories of Section 512(e)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing, a spreadsheet identifying, by artist, song title and – consistent with 17 U.S.C. § 512(d) – URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI Publishing's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI Publishing works that have been copied, performed or distributed by MP3Tunes including the number of times each work has been accessed by MP3Tunes users.

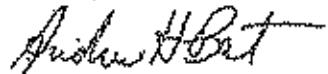
The enclosed representative list reflects only a small portion of the total number of infringing EMI Publishing works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI Publishing's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on the representative list we are providing, MP3Tunes is obligated to remove all of EMI Publishing's copyrighted works, even those not specifically identified on the attached. See S. Rep. No. 105-190, at 46 (1998) (requiring operator of site to take action upon being provided with a "representative list" sufficient for the operator to "understand the nature and scope of the infringement being claimed"). A non-exhaustive further listing of songwriters whose works are owned by EMI Publishing can be found at <http://www.emigroup.com/About/Music/EMI+Music+Publishing+songwriters.htm>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI Publishing copyrighted works, remain unavailable on or through MP3tunes.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI Publishing, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI Publishing as set forth in this letter.

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Very truly yours,



Andrew H. Bart

Enclosure

cc: Michael Abitbol, *EMI Entertainment World, Inc.*

JENNER & BLOCK

October 25, 2007

BY OVERNIGHT DELIVERY

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Re: *EMI Entertainment World/Infringement of Copyrighted Works*

Dear Ms. Richards:

We are counsel for EMI Entertainment World, Inc. ("EMI Publishing"), a division of EMI Group and one of the world's leading music publishers. EMI Publishing is the owner of copyright, exclusive rights under copyright, or related common law and statutory rights, in musical compositions. Among the over one million compositions owned or controlled by EMI Publishing are some of the most popular songs of the past and the present, including "Over the Rainbow," "Higher Ground," "Start Me Up," "Come As You Are," "I Bet You Look Good on the Dancefloor" and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Oboe Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted works in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Oboe Software Suite" and the "Oboe Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Oboe locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless works owned by EMI Publishing, such as "If I Ain't Got U" and "Janie's Got A Gun." All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using songs by other EMI Publishing songwriters returned similar results. However, EMI Publishing has not authorized any of its works to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries.

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Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," falls within any of the enumerated categories of Section 512(a)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and – consistent with 17 U.S.C. § 512(d) – URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI works that have been copied, performed or distributed by MP3Tunes including the number of times each work has been accessed by MP3Tunes users.

The enclosed representative list reflects only a small portion of the total number of infringing EMI works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on the representative list we are providing, MP3Tunes is obligated to remove all of EMI's copyrighted works, even those not specifically identified on the attached. See S. Rep. No. 105-190, at 46 (1998) (requiring operator of site to take action upon being provided with a "representative list" sufficient for the operator to "understand the nature and scope of the infringement being claimed"). Non-exhaustive further listings of artists whose works are owned by EMI can be found at <http://www.capitolrecords.com/artists/>, <http://www.virginrecords.com/home/artists.html>, <http://www.bluenote.com/artists.asp>, http://www.narada.com/artist_page.htm, and <http://www.astrolworks.com/>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI copyrighted works, remain unavailable on or through MP3Tunes.

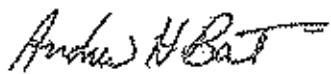
EMI further notes that MP3Tunes infringes and is responsible for the infringement of EMI works that were first fixed prior to February 1972 ("pre-72 works") and which are protected under state law. *E.g., Capitol Records, Inc. v. Naxos of America, Inc.*, 830 N.E.2d 250 (N.Y. 2005). As the DMCA is a provision of the United States Copyright Act, it provides no protection for MP3Tunes' infringement of EMI's pre-72 works.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI as set forth in this letter.

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Very truly yours,



Andrew H. Bart

Enclosure

cc: Alasdair McMullan, Esq., EMI Music North America
Scott Schreiber, Esq., EMI Music North America